

PUBLIC HEARING

COMMISSION ON STATE MANDATES

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TIME: 9:34 a.m.

DATE: Thursday, April 27, 2000

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

WILLIAM SHERWOOD, Vice Chair
Representative for PHILIP ANGELIDES
State Treasurer's Office

ALBERT P. "AL" BELTRAMI
Public Member

D. MICHAEL FOULKES
Representative for KATHLEEN CONNELL
State Controller

MILLICENT GOMES
Representative for LORETTA LYNCH
Director, Office of Planning and Research

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

JOHN S. LAZAR
Turlock City Council

COMMISSION STAFF

PAULA HIGASHI, Executive Director

PAT HART JORGENSEN, Chief Legal Counsel

SHIRLEY OPIE, Assistant Executive Director

PIPER RODRIAN, Staff Services Analyst

DAVID SCRIBNER, Staff Counsel

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A P P E A R A N C E S

PUBLIC TESTIMONY

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A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3:

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For San Diego Unified School District:

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Appearing Re Item 4:

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A P P E A R A N C E S

PUBLIC TESTIMONY

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Appearing Re Item 7:

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Deputy Attorney General
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ERRATA SHEET

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BE IT REMEMBERED that on April 27, 2000,
commencing at the hour of 9:34 a.m., thereof, at the
State Capitol, Room 126, Sacramento, California, before
me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
following proceedings were held:

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CHAIR PORINI: We'll go ahead and call to order
the Commission on State Mandates.

May I have roll call?

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Here.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Here.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Here.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Here.

MS. HIGASHI: Mr. Sherwood?

VICE CHAIR SHERWOOD: Here.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Here.

MS. HIGASHI: And Ms. Porini?

CHAIR PORINI: Here.

We have a quorum. We'll move on to the minutes
of the March 30th meeting.

MS. HIGASHI: For Item 1, I have one correction
I would like to make to the minutes on the very last

page, page 11. The time of adjournment should read 12:41 instead of 12:07. 12:07 was when we recessed into closed session, when the court reporter left.

MEMBER STEINMEIER: I have one change also, page ten. The number one, two, three, four -- fifth paragraph, the last acronym, it says, "BSBA." It should be "CSBA." It stands for the "California School Boards Association."

CHAIR PORINI: Any other corrections, additions, changes?

All right, if not, may I have a motion?

MEMBER BELTRAMI: So moved, Madam Chairman.

VICE CHAIR SHERWOOD: Second.

CHAIR PORINI: We have a motion and a second.

All those in favor indicate with "aye."

(A chorus of ayes was heard.)

CHAIR PORINI: Opposed?

The item carries.

We'll move on to our next item.

MS. HIGASHI: The next item is the proposed consent calendar, which consist of Item 5, Adoption of the Proposed Statement of Decision for the test claim on "School Site Councils and Brown Act Reform"; and Item 8, Adoption of the Proposed Statewide Cost Estimate for "Pupil Residency Verification and Appeals."

We have not received any comments from either item.

CHAIR PORINI: All right, any comments from members?

All right, hearing none, may I have a motion?

MEMBER STEINMEIER: I'll move approval.

VICE CHAIR SHERWOOD: Second.

CHAIR PORINI: We have a motion and a second.

All those in favor, indicate with "aye."

(A chorus of ayes was heard.)

CHAIR PORINI: Opposed?

Consent calendar carries.

MS. HIGASHI: Before we go to our hearing, what I'd like to do for Items 2, 3, 4, 6 and 7, is to have all of the witnesses stand.

(Several witnesses stood up to be sworn in.)

MS. HIGASHI: And if you would please raise your hands?

Do you solemnly swear or affirm that the testimony which you are about to give is true and correct based upon your personal knowledge, information or belief?

(The witnesses answered affirmatively.)

CHAIR PORINI: All right, we'll go back to Item 2.

MS. HIGASHI: Item 2 will be presented by Chief Counsel, Pat Hart.

MS. HART JORGENSEN: Good morning. To give you a little background on this issue, the Commission, on January 27th, 2000, and again on February 24th, 2000, heard this test claim. On February 24th, 2000, the Commission unanimously denied the test claim with a five-to-zero vote.

The Proposed Statement of Decision was scheduled for adoption at the Commission's March 30th, 2000 hearing. The Proposed Statement of Decision was a denial based on a finding that the application of the Sacramento II and Hayes factors evidences test claim legislation and implementing regulations were not coercive; and that local agencies adopting SEMS have really chosen to do so.

MEMBER GOMES: Pat, I'm sorry to interrupt you at this point. You know, we've been through this several times before. I'm prepared to make a motion at this time that the Commission adopt Option 1-A, which is the Commission find that SEMS does not constitute a new program or higher level of service.

CHAIR PORINI: All right, we have a motion and a second.

Let's do a roll call on this.

MS. HIGASHI: We have witnesses at the table who should state their names.

CHAIR PORINI: All right, state your name for the record.

MS. FAULKNER: Marcia Faulkner, County of San Bernardino.

MR. CUNNINGHAM: Jim Cunningham, San Diego Unified School District, interested party.

MR. LOMBARD: Jim Lombard, Department of Finance.

MR. McKECHNIE: Bob McKechnie, State OES.

MS. LOPEZ: Leslie Lopez from the Attorney

General's office on behalf of Department of Finance.

CHAIR PORINI: All right, we have a motion and a second.

MEMBER STEINMEIER: A question.

CHAIR PORINI: Ms. Steinmeier?

MEMBER STEINMEIER: A quick question for any of the folks that just introduced themselves. Do you have any objection to the motion; and if so, why?

MS. FAULKNER: We would like the opportunity to discuss this a little further.

MEMBER STEINMEIER: So you do have an objection?

MS. FAULKNER: Yes.

CHAIR PORINI: Now, this will be the third time we will have heard this.

MEMBER STEINMEIER: Yes, I realize that; but I didn't attend all of those meetings.

CHAIR PORINI: Do you intend to vote?

MEMBER STEINMEIER: Yes.

MS. FAULKNER: I have some new information I would like to present.

CHAIR PORINI: All right. One minute, please.

MS. FAULKNER: I have a handout that shows the effect of disasters that have occurred in San Bernardino County. And although the gentleman from State OES says the state reimbursement part is not much currently -- and that's true; but back at the time Chapter 1069 was signed by the Governor, which was September 27th, 1992, we had experienced quite a few disasters, and we're still in the

middle of resolving the Landers Big Bear earthquake. The ground shook for at least six months afterwards; and then three months later, this bill was signed. And then right around that, we then get winter storms in the fall of 1993. And so for those two, we're looking at potentially losing a total of 600,000 dollars, just at that time.

And we feel that's significant. We feel that we did not have any reasonable alternative but to implement SEMS.

CHAIR PORINI: All right, Mr. Cunningham, do you have anything to add?

One minute, please.

MR. CUNNINGHAM: I was here to address the application of the Hayes and Sacramento II cases to state mandate issues. And if I understand the motion, that is not an issue.

CHAIR PORINI: That's correct.

Mr. Lombard?

MR. LOMBARD: I have nothing further to add.

CHAIR PORINI: All right.

MR. McKECHNIE: I have nothing to add, except I might query the testimony from San Bernardino as to, is that personnel costs alone? Have you --

MS. FAULKNER: That is --

MR. McKECHNIE: -- split that out?

MS. FAULKNER: -- response-related, personnel costs only, including benefits and overhead. Here's a copy.

CHAIR PORINI: Ms. Lopez?

MS. LOPEZ: I was just going to address the Hayes and Sacramento II issue. But it's a non-issue, unless anybody else has any questions.

CHAIR PORINI: Members, do you have any questions?

We have a motion and a second before us.

May we have roll call?

MEMBER BELTRAMI: What's the motion again, Madam Chairman, please?

MEMBER STEINMEIER: Option 2, I think.

CHAIR PORINI: Would you like to restate it?

MEMBER GOMES: The motion is that the Commission adopt Option 1-A, which is the Commission finds that SEMS does not constitute a new program or higher level of service, period.

CHAIR PORINI: All right, we have a motion and a second.

MEMBER BELTRAMI: Madam Chair, under discussion, where would that leave then the issue of coercion and voluntary coercion?

MEMBER STEINMEIER: It doesn't.

CHAIR PORINI: It does not address the issue.

MEMBER BELTRAMI: Okay. I agree that in this instance, that issue probably is not persuasive, at least to me. But I don't think that in the future, if someone can come forward with added material and so forth on other issues, that I would be very interested in that issue.

CHAIR PORINI: Well, this is the only issue we

have before us at this time.

MEMBER BELTRAMI: I see. Well, of course, it was discussed throughout the -- but on this motion, I understand.

CHAIR PORINI: All right, may we have roll call?

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Aye.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Abstain.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Aye.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: Aye.

MS. HIGASHI: The motion carries.

This brings us to Item 3. Item 3 is the test claim on "Involuntary Transfers."

The test claim statutes require school districts to adopt rules and regulations governing procedures for the involuntary transfer of students to continuation schools and opportunity schools, classes or programs. In 1997, a draft staff analysis was issued. That analysis recommended approval of the requirement for

continuation schools to adopt rules and regulations and denial of the remaining portions of the test claim. The claimant filed comments opposing that part of the analysis that recommended denial based on federal law and requested that it be withdrawn and rewritten.

The staff analysis before you today has been updated and revised to address issues raised by the claimant and to reflect the views of current staff.

On March 20th, a revised staff analysis was issued for the March 30 hearing. The Commission postponed this hearing at the request of the Department of Finance. The revised staff analysis has now been supplemented by staff's response to the comments that were received after the March 30 hearing.

Staff finds that prior law did not require school districts to adopt specific rules and regulations for the involuntary transfer of pupils to continuation schools, opportunity schools, classes and programs. Therefore, staff concludes that the test claim statutes impose a new program and higher level of service upon school districts within the meaning of Section 6, Article XIII B of the Constitution, for the adoption and implementation of these regulations.

The staff analysis considers whether the test claim statutes imposed costs mandated by the federal government; and if the U.S. Supreme Court's 1975 decision in *Goss v. Lopez* is applicable.

Based on the revised staff analysis and the supplemental analysis, staff concludes and recommends the

Commission approve this test claim based on Option 1.

If the Commission adopts Option 1, approval would be based on the following findings: An involuntary transfer of a pupil to a continuation school, opportunity school, class or program does not deprive that pupil of his or her property right to an education, and does not exclude that pupil from school. Therefore, the requirements to adopt the prescribed regulations for the involuntary transfers results in a new program or higher level of service under Section 6, Article XIII B, and imposes costs mandated by the state upon school districts pursuant to Government Code section 17514.

CHAIR PORINI: All right.

MS. HIGASHI: Will the parties please state their names for the record?

MS. BERG: Carol Berg, Education Mandated Cost Network.

MR. CUNNINGHAM: Jim Cunningham, San Diego Unified School District, claimant.

MR. BELL: Jeff Bell, Department of Finance.

MS. OROPEZA: Jeanie Oropeza, Department of Finance.

CHAIR PORINI: All right, Ms. Berg, would you like to begin?

MS. BERG: I will defer to the claimant. Thank you.

CHAIR PORINI: All right.

MR. CUNNINGHAM: Briefly. We agree with the recommendation in the staff analysis that the Commission

approve the test claim based upon Option 1. We've provided substantial written commentary.

I'm available to answer any questions that the Commission members may have, and would like to reserve the right to rebut any arguments raised by the Department of Finance.

CHAIR PORINI: All right, any questions from members?

Mr. Foulkes?

MEMBER FOULKES: Thank you, Madam Chair.

A question to the claimants. So is it your contention that there is no stigma attached to a student being forcibly moved to a continuation high school from a regular high school?

MR. CUNNINGHAM: I think our position is that under the U.S. Supreme Court decision, stigma is not enough to trigger a liberty interest. There has to be some negative effect on reputation, coupled with the denial of a state right. And there is no California state right to attend a particular school.

MEMBER FOULKES: Okay, but then could you address, also under the property analysis, that -- okay, you're talking about the liberty interest. What about the property interest?

MR. CUNNINGHAM: Again, in order to have a property interest under the cases that we've cited, there has to be a state right that is affected. And, again, there is no state right to attend a particular school.

MEMBER FOULKES: Could I have Finance's comment

on that?

MS. OROPEZA: I think we would disagree, in that continuation schools operate very differently than regular high schools. For example, if a student were attending Lowell High School, they have access to several programs that I don't believe the student would have at a continuation school. Those programs operate for approximately four hours, when regular high schools have different opportunities for kids. And we think that in terms of applying for college and so forth, we think it could have a negative impact on the students' ability to attend UC, for example.

CHAIR PORINI: Mr. Cunningham, Ms. Berg?

MS. BERG: Yes, if I may, Ms. Chairman.

A student attending a continuation high school must attend for the normal and regular number of minutes in order for that continuation high school to collect regular apportionment.

Number two, a district offers a district graduation high school diploma that is exactly the same, whether it's from Lowell High School or from any continuation high school or alternative high school that is within the district's educational units.

MS. OROPEZA: And just for clarification; I wasn't referring to the actual diploma, but the added classes that students would have access to at a regular school, that I don't believe are necessarily available at the continuation setting.

MS. BERG: Again, let me respond, that the

State of California has graduation requirements that must be met for a high school diploma, and those are all available at the continuation high school. They do meet the requirements for entry into the Cal State University system.

CHAIR PORINI: Ms. Oropeza?

MS. OROPEZA: As I understand it -- and what has been raised to us on other issues -- is students that do not take advanced placement courses will not even be considered generally for the UC system.

I'm not debating that regular graduation requirements and diploma. It's what happens when students apply for the UC, and how they compete with other students in the state.

And my understanding is that students that do not take advanced placement courses will not be considered necessarily by the University of California in those situations.

CHAIR PORINI: Ms. Steinmeier, you had a comment?

MEMBER STEINMEIER: A couple of thoughts. First of all, with all due respect, AP courses could be taken through community colleges, and students do that all the time, where a high school doesn't have an AP course. So there are other ways around that.

Also, these involuntary transfers are not always permanent. If it happens to, let's say, a freshman, they could get back into high school within a year. So it isn't necessarily a permanent situation; but

I believe that the involuntary transfer is something that the school district -- at least the way the State of California is now construing it under this law -- really doesn't give them any choice.

And there are -- when they talk about opportunity schools and these other classes, they vary tremendously. They don't really deprive them of an education. And a student who's really determined to get into a four-year institution can still do it that way. And I've seen kids do it, you know, myself.

And the other issue is that, does a school district guarantee a student to have a place in a particular school? Well, from time to time, school districts reapportion school districts all the time and move students from one place to another. Now, you don't have the same stigma, obviously, everybody had to go. But there is no clear right to go to a particular school in any school district in California, and there never has been.

Involuntary transfers I realize are slightly different; but from a legal standpoint, you know, a school district just needs to provide an education, wherever that might be.

So I think that the staff analysis really does stand the test of our mandates law, and it is a mandate.

CHAIR PORINI: Mr. Cunningham?

MR. CUNNINGHAM: Yes, thank you.

The perception that may be there that the continuation and opportunity school is a punishment is

really not true. The vast majority of students who attend a continuation or opportunity class choose to do so. It's a very small minority that are involuntarily transferred.

The purpose is to provide education alternatives for students who may not do well in a normal classroom setting. And it's an opportunity for them to get an education through some other means.

CHAIR PORINI: All right, other questions?

Mr. Beltrami?

MEMBER BELTRAMI: Dr. Berg is the education expert here. What is the difference between a continuation school? I mean, what's the daily routine difference?

MS. BERG: The daily routine, number one, the class sizes are usually very, very small. The counselor ratio to students is very, very high. The youngsters who choose continuation school often -- in some districts, the hours of the continuation school are slipped, so that a youngster can start later in the day and be at school longer into the daytime. These are youngsters that sometimes have trouble getting up. And if they're involuntarily transferred there, oftentimes it's because of an inability to attend the regular day.

So it's those kinds of adjustments that are made at a continuation high school.

MEMBER BELTRAMI: Thank you.

CHAIR PORINI: Is the classroom day a four-hour day?

MS. BERG: The classroom is the same number of minutes as a regular high school student must attend.

CHAIR PORINI: Okay.

Mr. Foulkes?

MR. CUNNINGHAM: The other thing is the continuation and opportunity schools are not necessarily a separate school. Often, they are a classroom setting on the same campus. So they may still be attending the same campus; it's just designated as a different type of school.

CHAIR PORINI: Mr. Foulkes?

MEMBER FOULKES: Thank you, Madam Chair.

And, again, I appreciate the comments of Commissioner Steinmeier. I do -- I actually taught at a continuation high school; and I respectfully disagree, especially with the claimants. I do think that there is -- this is a separate type of institution where the quality of education is not the same. The folks who are in these classrooms -- we had someone who was a senior in high school who still could not read. And even though you have a small class, you cannot provide the same educational opportunities if you are having to teach -- again, you're saying, I'm sure there are kids who can go beyond this and strive and do very well. But I think the difficulties that they face in those type of situations versus the normal high school classroom are much more severe.

Again, if you're a senior in an English class and there are students who cannot read, I think that

really lowers your ability to succeed.

And, again, I think, while I appreciate the fine work of the staff, I think that this claim sets up a dangerous precedent for really saying that these students do not have constitutional rights; and I believe that they do in this setting because they really are losing out on something which I think is very tangible and very important in our education system.

CHAIR PORINI: All right.

MEMBER GOMES: I have a comment. Taking into consideration members' comments, I guess my concern is that I don't really see the difference between an expulsion and an involuntary transfer. It seems to me that the same process has to be followed in those respects. So if you could address those?

MR. CUNNINGHAM: Yes, I'd be happy to.

In an expulsion, the student is away from school for some period of time. Under an involuntary transfer to a continuation school, it -- the purpose of these schools is to keep the kids in school --

MEMBER GOMES: Well, I understand that. My question --

MR. CUNNINGHAM: -- and to get that education.

MEMBER GOMES: -- is the process by which someone is expelled. There's obviously got to be notice and meeting requirements to expel somebody from school; in the same respect as there's notice and meeting requirements under the involuntary transfers.

MR. CUNNINGHAM: Sure. But those notice and

hearing requirements for an expulsion arise because there is a constitutional right, based upon California's law, that says that children are entitled to an education -- free education. Because of that state law -- actually, the state Constitution -- when you deprive somebody of that right to an education, then that raises federal due process issues because of the property right. But we're not depriving a child of an education. In fact, what we're trying to do is assure that the child continues the education through one of these alternatives.

And if I can read you just a quote from one of the cases that we cited -- this is the Supreme Court case -- it says that -- and it's talking about the Wisconsin case that was cited in the earlier staff report. It says that the stigma language arises because of what the government is doing to the person. But that referred to the fact that the governmental action in that case deprived the individual of a right previously held under the state law -- and in that case, it was the right to purchase or obtain liquor in connection with a right of citizenry.

Again, if there isn't a state right to attend a particular school -- which there is not in California -- then there is no property right being affected and no liberty right impacted. And that's the difference between an involuntary transfer and an expulsion.

CHAIR PORINI: Ms. Berg?

MS. BERG: May I just put it in third-grade English, Mrs. Gomes, that might help?

When a student is in --

MEMBER BELTRAMI: That will reach us.

MS. BERG: Well, I have great respect for our colleagues of the bar. However, not being one of them, but being an old-school person, the difference between an involuntary transfer and an expulsion is this: An expulsion deprives the youngster of the right to attend the educational services offered by the district. That's why you go through formal hearings, and formal board action is required for an expulsion.

Until the law changed three years ago -- I believe it was three years ago -- youngsters were basically just tossed out of the district. They lost their right to attend school. The law changed, and now you have to expel them to something, and that's where the community schools came into play.

A transfer does not deprive the student of their right to attend an educational institution within the district. It simply says that you can't go to this school; you've got to go to this school. That's the difference.

MEMBER GOMES: And I -- thank you, and I appreciate that, and I do understand the difference as far as depriving them an education, of going to school.

My question is that I don't really understand the distinction or the higher level of service or the new program connected to the difference of procedure that is taken upon by the school districts with an involuntary

transfer and an expulsion.

CHAIR PORINI: Go ahead and answer that question, and then I'd like to hear from the Department of Finance.

MR. CUNNINGHAM: Prior to this test claim statute becoming law, that transfer did not require any notice or hearing procedure. The principal could transfer the pupil to an opportunity school or continuation school without going through the statutory requirements. Once this test claim statute was put into place, then the state created certain due process rights that -- or hearing rights and notice rights. But, again, it was the state that created those. They didn't come as the result of any federal due process rights.

So because the state created these, it required school districts to go through the entire procedure, where they didn't have to do that prior to these test claim statutes becoming effective. That's the new program.

CHAIR PORINI: All right, Department of Finance, do you want to make your opening statement, too?

MS. OROPEZA: Yes, we'll do it in two parts --

CHAIR PORINI: Great.

MS. OROPEZA: -- if that's okay.

CHAIR PORINI: Thank you.

MS. OROPEZA: I would agree with Member Gomes. There is no difference, in our mind, in terms of what you have to do. Because in either case, you're placing a student in a setting. Whether it be in the same district

or in a different district, you are placing the students somewhere else.

I think the main difference would be, though, that the district has a choice to involuntarily transfer them; where under an expulsion, the district complies with certain laws that force them to expel a student under certain circumstances. But in terms of due process, we believe that they have the same requirements because you are placing the student in a different setting. Whether it be within the district or out in a different district, it's still the same process.

MR. BELL: And we believe that's the issue of whether to use the involuntary transfer process and opportunity schools and programs and expulsions. There's a distinction there, in that the use of the involuntary transfer process is a choice for school districts. They choose whether to use that process or not use it. Since they choose whether to use it or not, the costs associated with the use of that process do not appear, to us, to be mandated costs. They don't have to use the involuntary process.

All the rules and code sections that govern the involuntary process come into effect after they have chosen, "Yes, we're going to use the involuntary process." So we do not believe that the costs associated with it fall under the Government Code sections that govern mandates or the Constitutional code sections that govern mandates.

CHAIR PORINI: All right, questions, Members?

MEMBER BELTRAMI: Ready for a motion, Madam

Chair?

CHAIR PORINI: I am.

MEMBER STEINMEIER: I would like to move the
staff recommendations to find this a mandate under
Option 1.

MEMBER BELTRAMI: Second.

CHAIR PORINI: All right, we have a motion and
a second.

Is there any further discussion?

May I have roll call?

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Yes.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: No.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: No.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Aye.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: No.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Ms. Porini?

MEMBER PORINI: No.

MS. HIGASHI: The motion fails.

Is there another motion?

CHAIR PORINI: Mr. Foulkes?

MEMBER FOULKES: Thank you, Madam Chair.

I'd like to move Option 2, finding one, partial approval of test claim based upon the finding of a property interest.

CHAIR PORINI: Do I have a second?

Hearing none, the motion dies for lack of a second.

Anyone else care to take a shot at this?

MEMBER GOMES: Well, I would like to make a motion that this is not a new program or higher level of service.

CHAIR PORINI: All right, do I have a second?

MEMBER FOULKES: Second.

CHAIR PORINI: All right, we have a motion and a second. Discussion?

May I have roll call?

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Yes.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: No.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Yes.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: No.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: No.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Yes.

MS. HIGASHI: Ms. Porini?

MEMBER PORINI: Yes.

MS. HIGASHI: Motion carried.

CHAIR PORINI: Thank you very much.

MS. HIGASHI: This brings us to Item 4,

"Seriously and Emotionally Disturbed Pupils:

Out-of-State Mental Health Services."

David Scribner will present this item.

MR. SCRIBNER: Good morning. The "Seriously and Emotionally Disturbed" or "SED" pupils test claim involves the paying for and monitoring of out-of-state residential placements for SED pupils, as required in the pupils' IEP. SED pupils exhibit chronic behavioral problems like fire-setting, unprovoked physical assaults on peers and adults, sexual assaults on peers, severe alcohol and drug abuse, extreme self-destructive and self-mutilating behaviors, and frequent run away behavior.

In the worst cases, SED pupils must be removed from their schools and placed in one of the state's residential programs. These placements are typically referred to as out-of-home placements. When out-of-home placement is not available or deemed to be inadequate to meet the pupil's needs, the pupil is placed in a out-of-state residential program.

The staff analysis addresses two main issues. First, whether a shift of costs and activities between local and governmental entities creates a new program or higher level of service; and second, whether there are costs imposed by the state.

For each issue, the staff analysis provides two

options for the Commission's consideration. The first issue addresses whether a shift of costs and activities between local governmental entities creates a new program or higher level of service. Immediately before the enactment of the test claim legislation, local educational agencies were responsible for paying and monitoring the mental health component of out-of-state residential placements for a SED pupil.

The test claim legislation shifted these responsibilities to county mental health agencies. The case of *City of San Jose v. the State of California* guides the determination of whether a shift or responsibilities from local -- one local agency to another represents a new program or higher level of service. The staff analysis addresses the *City of San Jose* case in more detail.

The Commission has the following options regarding the applicability of the *City of San Jose* case to the present test claim: If the Commission adopts Option 1-A, the Commission needs to address the issue of whether the test claim legislation constitutes a cost mandated by the state.

If the Commission adopts Option 1-B, the Commission need not address whether there are costs mandated by the state.

Recall Option 1-A provides the Commission finds that the *City of San Jose* case does not preclude a finding that the test claim legislation imposed a new program or higher level of service upon county mental

health agencies, because although the test claim legislation shifted activities from one local agency to another, it was a state requiring the shift.

Furthermore, City of San Jose addressed the shift of costs only. Here, there is a shift of costs and activities.

Option 1-B provides the Commission finds that the City of San Jose case precludes a finding that the test claim legislation has imposed a new program or higher level of service on county mental health agencies because the test claim legislation represents a shift from one local agency to another.

Staff recommends that the Commission adopt Option 1-A; that the City of San Jose case does not preclude a finding that the test claim legislation has imposed a new program upon counties -- or has imposed a new program upon counties, and continue to determine whether test claim legislation imposes costs mandated by the state.

The second issue addresses whether a cost mandated by the state in this issue of whether -- the issue of whether federal special education law requires counties to pay and monitor the mental health component of out-of-state residential placements for SED pupils must be addressed to determine whether they are costs mandated by the state.

The staff analysis details whether federal law requires counties to provide special education-related services to disabled children.

The Commission has the following options regarding whether the test claim legislation imposes a reimbursable state-mandated program upon counties:

Option 2-A provides approval of the test claim. It states federal law does not require counties to pay for and monitor out-of-state residential placements for SED pupils. Under the test claim legislation, counties are neither responsible for, nor are they providing educational services for SED pupils, as required under federal law for counties to be included in the definition of a local educational agency.

Option 2-B provides the denial of the test claim. It states although federal law does not specifically require counties to provide out-of-state residential placements for SED pupils, federal law does require local agencies to adhere to SED pupils' IEP. The SED pupils' IEP requires the county to pay for and monitor the pupils' out-of-state placement, and that placement stems from federal, not state, law.

Staff recommends that the Commission adopt Option 2-A, approving the "Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services" test claim for those activities listed on pages TC-4 and TC-20 of the staff analysis.

Please state your names for the record.

MR. McIVER: Paul McIver, Los Angeles County Department of Mental Health.

MR. KAYE: Leonard Kaye for the claimant, Los Angeles County.

MR. KHALSA: Gurubanda Singh Khalsa, financial officer for the Los Angeles County Department of Mental Health, and also committee member of the Financial Services Committee of the California Mental Health Directors Association, spokesperson.

MR. ULRICH: Robert Ulrich, I'm a financial person with the Mental Health Department.

MR. STONE: Dan Stone with the Attorney General's office for the Department of Finance.

CHAIR PORINI: All right, claimants, do you want to make your opening statement?

MR. KAYE: Yes, thank you. We'll be brief.

First of all, good morning. And we certainly do concur in staff's recommendation. We found that it was thorough. They've considered quite a few approaches to this serious problem of funding out-of-state services.

We also agree with staff's specific findings. We find them well-reasoned, thoroughly researched. And based upon a very long compendium of pertinent federal law -- and they found, and we agree -- that federal law does not require counties to provide mental health services for "seriously emotionally disturbed" or SED pupils -- we'll be referring to "SED pupils" as sort of an acronym -- who are placed in out-of-state residential programs.

We really very strongly believe that we provide the services which are very critical and important services because the state, and only the state, has directed us to do so.

In addition, we agree with staff's finding that there is nothing in case law that has been brought forward up to this very moment which bars reimbursement here. Just as in-state services for SEDs pupils were found to be reimbursable, so now out-of-state services for SEDs pupils are, in our view, reimbursable. The rules here have not changed.

Now, in our segue, I'd like to turn the microphone over to Mr. Paul McIver, who can talk about services under this program and the kinds of special problems that he deals with on a daily basis.

CHAIR PORINI: Mr. McIver?

MR. McIVER: Yes. Thank you for the opportunity to speak with you.

Mr. Scribner accurately described the kinds of young people, predominantly teenagers, that we place in out-of-state residential facilities. These are young people that present extreme, difficult behaviors and challenges, such as chronic substance abuse, runaway behavior, aggressive behavior, assaults on peers, assaults on teachers, sexual aggressive behaviors with peers, a whole cornucopia of behavioral and emotional problems.

And, fortunately, the numbers of children that manifest these problems are relatively small in number. The vast majority of children that we serve under this program in California are served in their own communities. But there are some -- and they probably number less than two or three hundred at any given

time -- require placement in facilities outside of California. And we wonder, well, why do we place these youngsters in places other than California? Most of these young people -- and, by the way, they are not wards or dependents of the court; these are children who are in the full custody and control of their parents or guardians -- but California simply does not have the facilities, in many cases, to serve children or adolescents with these extreme behaviors. In many instances, these young people have already been in multiple placements in California and have failed them, and have been discharged from them. In some cases, they have been refused admission by multiple California agencies because of the chronicity and severity of their presenting problems.

We have relationships with approximately 15 agencies in other states, primarily in Utah, Colorado, Arizona and Texas, that are among some of the finest agencies in the country to serve the needs of these very difficult young people; and that they are a part of our continuum of care that is vital to our ability to obey the law and implement each child's individual education program.

And if anyone has any questions about the program and its operation, I'd be glad to answer them.

CHAIR PORINI: All right, does anyone else wish to speak for the claimants?

MR. ULRICH: Yes. My name is Rob Ulrich. And what I wanted to provide to you was the assurance that,

as we do some other SB 90 claims, we have established a good working relationship with our own Auditor-Controller who reviews our claims, and with the State Controller's Office. And I just want to give you the assurance that we have internal controls to identify the applicable costs for the programs that Mr. McIver has identified and that we have been able to ascertain any costs that are not appropriate, to make sure that we are only claiming for the eligible portions of these claims.

So we have internal controls and working relationships. And this has been a very good working model for us. And I'm happy to answer any questions you may have in this regard as well.

CHAIR PORINI: All right, anyone else for the claimants?

MR. KHALSA: It's a pleasure to be before you because of your Commissions's historical support of the 3632 services. And with the time of the program, as Mr. McIver clearly indicated, the most seriously mentally ill children are the beneficiaries of this current program.

Mental health has historically been underfunded. And that's where your Commission's support in the past has been just exceptionally supportive of the efforts of providing services to the target population that we're here today appealing for your continued support in the state component. So there's a comprehensive nature of taking care of every need of this population.

So, again, it's a pleasure to be before you because of that support; and we really are looking forward to your continued support in this constant time of mental health underfunding at the local level.

Thank you.

CHAIR PORINI: All right. Before we take questions, I'd like to hear from Mr. Stone.

MR. STONE: On behalf of the Department of Finance, I will also be quite brief. Our written submission, I believe, sets forth the position. We would obviously disagree with staff's recommendation with respect to Options 1 and 2.

We would suggest that the San Jose case -- although staff correctly says that the facts there are not exactly on point with the facts presented here, the holding that there is nothing in Article XIII B, section 6, that precludes a shift of costs of obligations from one local agency to another does apply here. The case can be read more narrowly; and staff has chosen to do it. But we suggest the principle is broader than that.

And secondly, even assuming that Option 1-A is adopted by the Commission, we believe that Option 2-A is absolutely required, and that is a determination that the programs and services at issue here are, in fact, required under federal law, as part of a federal mandate, and, therefore, do not come within the state mandate.

Section 17556(c) of the Government Code, which we quoted in our papers, is fairly absolute. It says,

"The Commission shall not find costs mandated by the state if the statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government." And that's precisely what happened here. As staff points out, the federal definition under the IDEA of a free, appropriate public education includes related services; and precisely these services, as the claimants have pointed out, are, indeed, necessary and required in order for these exceptionally disturbed students to receive the benefits of a public education. They're part and parcel of the required federal program.

Similarly, the federal definition of "local educational agencies," those agencies which are required to provide the services, is broad enough to include any agencies that assist LEAs in related services, in providing related services. Again, in this state's structure, the county mental health department obviously falls within that definition, to the extent that it provides these services. Both for in-state and out-of-state services, it's related to their educational needs. And in that sense, it falls within the broader definition of local educational agencies.

So regardless of what the Commission may be inclined to do with respect to Options 1-A and 1-B, we believe that Option 2-A is the required finding.

CHAIR PORINI: All right. We'd open it up to questions from members at this point.

Ms. Steinmeier?

MEMBER STEINMEIER: Boy, I really struggled with this one. This is extremely complicated. I have a headache.

CHAIR PORINI: It's not good nighttime reading. It's tough.

MEMBER STEINMEIER: I have a headache from reading these things. They gave us a lot of options, which I appreciate, but, boy, that caused more of a headache.

Having gone through this numerous times, I think the key part for me is, does the federal IDEA law apply to counties? And in struggling with that question, and in reading all the background material, on the previous decision we made due to in-state placement, which is similar, that the logic was that it didn't apply to counties. So if we were to find that it does, we're going to be going back on a previous decision, which would concern me, even though we don't have a precedent here. We know it wasn't us that made the decision. But to be consistent, that's what we did before. That's my understanding.

If someone says that -- if it's not true, someone tell me now.

CHAIR PORINI: Staff, do you want to comment on that?

MR. SCRIBNER: That's correct. They did consider federal law, but they did not consider it a bar to subvention.

Now, whether or not they considered counties as

part and parcel under being considered an LEA, I don't think that that was part of the decision. But they just did a blanket determination that the IDEA was not a part of that.

CHAIR PORINI: Okay.

MEMBER STEINMEIER: Which has the same effect?

MR. SCRIBNER: Yes, but they weren't --

MEMBER STEINMEIER: They didn't use the --

MR. SCRIBNER: -- as specific as we are here in the staff analysis.

MEMBER STEINMEIER: Okay. But for consistency, that would be -- the federal law does not apply in this case, would be what the previous Commission decision would have indicated?

MR. SCRIBNER: That would be correct.

MEMBER STEINMEIER: Okay. For me, that's a threshold question, because if federal law applies, then I would stop right there.

Then, of course, the next question for me is, what was the law just prior to the enactment of this? And, clearly, counties weren't responsible for out-of-state placement. School districts picked it up. That was the previous law. So there is a change here.

The final one, which I think I'm still a little bit foggy about, does the San Jose case apply or not, that one I'd like to have some further discussion on from staff or from the Department of Finance, because that's the only one I'm not real clear on.

The other two points, I think, do fit the

mandate, in my mind.

CHAIR PORINI: All right, so Ms. Steinmeier's question is open to staff or Finance. Who wants to discuss the City of San Jose case?

MEMBER GOMES: I have a brief question for Member Steinmeier.

So you're saying that LEA's -- or, rather, the school districts were picking up the tab prior to the LEA being responsible?

MEMBER STEINMEIER: Not the LEA; the county.

MEMBER GOMES: Right, okay, the county.

MEMBER STEINMEIER: Uh-huh, just a moment before this law took effect, uh-huh.

MEMBER GOMES: Is that not a county to local agency shift? I mean, as far as not state mandated?

CHAIR PORINI: Well, I think that's your question.

MEMBER STEINMEIER: Right, they're two different paths. One's the federal --

MEMBER GOMES: Okay, I'm just --

MEMBER STEINMEIER: -- I'm trying to separate --

MEMBER GOMES: I'm trying to keep clear on what you're trying to get at so --

MEMBER STEINMEIER: Right. I think that clearly -- that's why I want to talk about the San Jose case. It isn't related to federal law; it's related to the internal shift inside of California.

MEMBER GOMES: Right.

MEMBER STEINMEIER: But they're interrelated, Ms. Gomes, so I want to talk about it to isolate the problem.

CHAIR PORINI: Let's have staff take a crack at this first, and then we'll get to you.

MR. KAYE: Okay. Thank you

CHAIR PORINI: Mr. Scribner?

MR. SCRIBNER: I'll come up to bat.

It was staff's position that the reason why we did not apply City of San Jose was that in City of San Jose, the counties clearly had the opportunity to impose or not impose that requirement upon cities, the booking fee requirement, as you all will recall. The county doesn't necessarily need to charge cities that, but they chose to do that.

Under this program, an LEA has absolutely no authority to tell or not to tell the county whether or not to provide these out-of-state placements. The state is the one that said, "This is how it's going to be when these kids get -- when the counties get involved in the IEP process." So that's one distinction.

And then we further peeled back the onion and said, "Beyond that, the City of San Jose dealt with costs only." And here we have costs and activities, which falls more under our mandate subvention code sections and the Constitution.

So those two things together is why we determined that in this instance, we're not necessarily taking a narrow view of the City of San Jose, we're just

applying the facts that were in the City of San Jose in this case and said LEAs clearly cannot shift or not shift those activities onto counties. They are shifted. It's done. And if an LEA tomorrow said, "Well, we'll pick up the tab," the regulation actually says, "No, you can't. Counties have to pay."

So I think it's -- or the code section is 6200 that says counties are responsible now, regardless of placement for SED pupils in or out of state. LEAs are not responsible for that anymore.

So I think that's the main distinction that we had between that case and the present test claim.

CHAIR PORINI: Mr. Stone and then Mr. Kaye; is that right?

MR. STONE: No well, I don't agree with Mr. Scribner that there are factual differences. I tried to make that clear initially. That if one limits the City of San Jose holding to those facts, then this would fall outside the holding. But the principle that this is not the state, looking back at the purposes of Article XIII B, section 6, that the state cannot take matters that it, itself, was providing programmatically or was paying for as costs and impose them on a local agency without subvention at least coming into issue. There are exceptions, but the subvention right will come into play. This is not that case. This is a case where local educational agencies were providing a service and/or funding the service when it was provided out of state, and now the counties are required to. I don't dispute

that at all.

The question is whether that's within the ambit of the subvention principle.

If I may, I'd like to speak to another matter that Member Steinmeier raised, which is the question of whether federal law dictates that counties or the county mental health departments, or that some specific local agency or adjunct, pay for the costs of any given program. That can't be the test because federal law, of course, does not do that -- or at least not to my knowledge, certainly not generally. It doesn't issue a required function or a required program or service that all states must provide and all locals must provide and then have what would be 50 little subchapters explaining which parish or township or subdivision in which they have to pick up the cost of each of the several services. That kind of precision would nullify the whole point of the federal mandate exception.

So I think the mere fact that counties are not named in the specific legislation should not dispose of the question.

CHAIR PORINI: Let me take Mr. Kaye, and then Mr. Scribner.

MR. KAYE: Okay. I would like to echo the thoughts of David Scribner, the staff person. But there's an important case that, even if what most folks are saying here is true, I think, controls. And that is that it's the -- it's my understanding that it's the State Department of Education that received approximately

\$378 million of federal funds and is responsible for administering this program, the IDEA program in California. And at that, that is the state and its local LEAs of which the county does not meet either the federal definition or the state definition of an LEA. It is the state which is responsible, and freely chose to assign those responsibilities to counties in the present case.

Prior to this legislation, it freely chose to assign it to school districts. Now, under the controlling case of Hayes, which for those of you that would like to read about it, this is on page 1278, in cases where there's a federal mandate upon the state, and the state has the ability to freely assign certain functions to local school districts or counties or what have you, then it becomes at that point of the assignment, a state reimbursable program.

In Hayes, there is also another citation, on page 1279, which indicates that, for purposes of this special education type of service, local school districts are agents of the state. So we do not have any kind -- or in any stretch of the imagination, any kind of a shift between local agencies.

I would just like to add one further point, and that is on page 1165, you'll find a letter from Assistant Superintendent Marks of the L.A. Unified School District to myself, explaining the fact that federal funds are received by local school districts for purposes of administering this program. The state has overall general supervisory responsibilities for administering

this program.

When the shift occurred and counties became responsible for providing these very, very critical services, none -- and I repeat, zero, with a "none" -- of these federal funds were transferred over to counties. We got the service responsibility without the federal funding.

Moreover, according to federal officials, which you will find in your notes, the county is not an eligible recipient for any federal IDEA funding. And, furthermore, in the view of most of the federal officials that we talked with that were knowledgeable about this program, they said that they knew of no case of a county being federally mandated under the IDEA program to provide these federal services.

CHAIR PORINI: All right.

MR. KAYE: Thank you.

CHAIR PORINI: Other questions?

MEMBER BELTRAMI: Madam Chair, probably just muddying the water a little bit; but on the San Jose case, there's a nuance there, and that is, that the counties charge the cities. The cities were not forced to incarcerate people. Some cities used to have Friday night sweeps, I'm told, where folks who are intoxicated all ended up in jail. And that seems to have gone down a little bit, after you had to pay for that.

In this case, there's no choice on the part of the county. It has to carry out this function. So there's a little different nuance there as well. Even

Turlock.

MEMBER STEINMEIER: Did Turlock do Saturday night sweeps?

CHAIR PORINI: Any other questions?

MEMBER FOULKES: Madam Chair, if it's appropriate, I'd like to make a motion.

CHAIR PORINI: All right.

MEMBER FOULKES: I'd like to thank Mr. Kaye and the other witnesses. And after going through this, I think there are very good arguments on both sides. But in the final analysis, we agree that there is a mandate here, and that the City of San Jose case doesn't apply.

So I'd like to move Option 1-A and Option 2-A, staff recommendation.

MEMBER STEINMEIER: Second.

CHAIR PORINI: We have a motion and a second for Option 1-A, and a second finding for Option 2-A.

MEMBER STEINMEIER: Correct.

CHAIR PORINI: Any discussion?

All right, may we have roll call?

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Aye.

CHAIR PORINI: Mr. Sherwood?

VICE CHAIR SHERWOOD: Aye.

CHAIR PORINI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

CHAIR PORINI: Mr. Beltrami?

MEMBER BELTRAMI: Yes.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Aye.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: Aye.

MS. HIGASHI: The motion is carried.

CHAIR PORINI: Thank you.

MR. KHALSA: Thank you very much.

CHAIR PORINI: All right, Item 5 was on the consent calendar, so that takes us to Item 6.

MS. HIGASHI: This brings us to Item 6, Dismissal of the Special Education Test Claim filed by the Santa Barbara County Superintendent of Schools.

On October 31, 1980, the Santa Barbara County Superintendent of Schools filed the test claim with the State Board of Control on the special education statutes. This claim was denied and ended up in the Court of Appeal in Hayes v. the Commission on State Mandates.

In 1992, the Hayes court remanded the Santa Barbara claim back to the Commission to conduct further proceedings.

On October 27th, 1999, the Commission staff notified Santa Barbara and all interested persons that a hearing to dismiss the 1980 claim would be held on January 27th, 2000, and that they had an opportunity to file comments.

On November 26th, 1999, Santa Barbara filed an application to withdraw all of its test claim under section 1183.08 of the Commission's regulations, except

that portion requesting reimbursement for special education for students ages 3 to 5 and 18 to 21, as provided by Education Code section 56026. Santa Barbara also amended the test claim by substituting Long Beach Unified School District as the claimant for the remaining portion of the claim.

On December 8th, 1999, Commission staff issued a letter to parties regarding Santa Barbara's request. The letter explained that section 1181 of the regs authorized the claimant to amend the test claim by the addition or substitution of parties and, thus, Long Beach was now the test claimant on the 1980 claim on Education Code section 56026; that there were now two claims which included the same Education Code; and that to ensure the fair, complete and timely consideration of both claims, the parties were notified of my intention to consolidate the claims pursuant to section 1183.06 of the Commission's regulations.

Within 60 days, any party could take over the withdrawn portions of the Santa Barbara claim, and the Commission would then be required to issue a decision, dismissing the withdrawn portions of the claim.

After this letter was issued, no school district asserted its right to take over the withdrawn portions of the Santa Barbara claim, thus requiring the Commission to issue a decision dismissing the withdrawn portions. This matter was set for hearing on January 27th of this year.

After testimony and discussion at the January

hearing, the Commission directed staff to schedule dismissal of the entire Santa Barbara claim for hearing. Commission staff notified all school districts in the state from a list provided by the Department of Education that this matter would be considered today.

Today, there are two issues before the Commission:

Issue number one, does the Commission have the authority to dismiss the pending test claim? Staff finds that the Commission has the authority under Common Law Principles to proceed with the dismissal hearing, since the Commission's 60-day notice to all identified school districts exceeded due process requirements.

Issue number two, what findings must the Commission make in a dismissal hearing? While case law recognizes that administrative agencies like the Commission have the inherent power under the Common Law to dismiss a pending action for delay in prosecution, this power is not without limits. There's no statute that explains the circumstances under which a court may find that a pending matter should not be dismissed for lack of prosecution. However, staff finds that if the Commission, upon hearing the testimony of the parties, determines that all or a portion of the test claim should not be dismissed, it must do so on a finding that good cause existed for the delay.

Staff also concludes that in order for the Commission to determine that the contested portion of the Santa Barbara test claim, namely, Education Code 56026

should be dismissed, the Commission must establish that, one, the claimants engaged in unreasonable delay; and, two, such delay prejudiced the Commission.

However, if the Commission determines that all or a portion of the Santa Barbara claim should not be dismissed, staff finds the Commission need only make a finding that good cause existed for the delay.

Will the parties please state their names for the record?

MR. MULLENDER: Joseph Mullender for Long Beach Unified School District.

MR. MURRAY: Anthony Murray for Long Beach Unified School District.

MS. McDONOUGH: Diana McDonough for supplemental claimant, Educated Mandated Cost Network and Educational Legal Alliance.

MR. STONE: Daniel Stone, Deputy Attorney General for the Department of Finance.

MS. SUK: Kyungah Suk from the Attorney General's office for the Department of Finance.

CHAIR PORINI: All right, we'll open it up.

Who wants to go first? Ms. McDonough? All right.

MR. MURRAY: Thank you.

CHAIR PORINI: Please.

MR. MURRAY: I think the best statement of the conclusion that we think is the correct one, was set forth in the staff's analysis of September 30, 1999. And that was on the request for reconsideration that Long

Beach made.

The staff said that the staff finds that the Santa Barbara claim is still pending. And, thus, the Commission's refusal to hear the Santa Barbara claim violates Government Code section 17551, requiring the Commission to hear and decide all claims, and the remand orders following Hayes. So the staff is saying that it's still pending. Anything except hearing on the issues, on the merits would violate both the Government Code and the Hayes remand.

Now, you've all read the Hayes case, I'm sure, and we've argued it here. But the Hayes case, in at least three different places, made it abundantly clear that they were remanding to the Commission to resolve the Santa Barbara -- this is at 1592 -- to resolve the Santa Barbara and Riverside test claims.

And in another place, they pointed out that one of the claims made by Santa Barbara was the ages 3 to 5 and 18 to 21 claim. And in two other places that I won't burden you with, the Hayes case said, "We are remanding it for you to consider the case," both of the test claims, in light of the criteria which we set forth in our decision.

In recent times, there's been an idea that somehow Santa Barbara abandoned its claim. It's hard to know where that idea got started. There's certainly no evidence that Santa Barbara ever abandoned the claim. Santa Barbara prosecuted this claim for at least ten years. It appeared twice before the old Board of

Control. It appeared twice in the superior court. It sent a letter to the Commission -- a declaration recently, saying that it spent over \$23,000 on the legal fees, which was a fair amount of money -- a fair amount of money today, and it was more then.

So Santa Barbara was paying the freight for all the school districts in the state, and it was doing it for at least ten years.

No one ever said to Santa Barbara, "Do you abandon your claim?" Nobody ever wrote to Santa Barbara. Nobody ever telephoned Santa Barbara. Nobody ever asked if Santa Barbara abandoned its claim.

It's unprecedented, in any forum -- in a court, in an administrative agency forum, for the tribunal to say that a claim has been abandoned and, therefore, we dismiss it, without inviting the person that files the claim, the plaintiff, the defendant, whoever it may be, to come forward and say, "Do you abandon your claim?"

As the staff has pointed out, in October of last year, they sent a letter -- this was the first letter that went out to Santa Barbara, and it said, "You have the right to substitute a claimant." Immediately -- as soon as Santa Barbara got that letter, within a matter of a few days, it substituted Long Beach Unified.

But Santa Barbara, again, had never been contacted before that letter. Now, compare this idea of abandoning a claim by implication with the Commission's regulation on withdrawal of a claim.

Section 1183.08, which the Commission adopted last year, says that a claimant can apply or make a motion to the Commission to withdraw a claim. If a claimant files such a request, it's not just automatically withdrawn. The Commission says, "Wait a minute," they send out a letter to all of the potential claimants -- school districts, administrative agencies -- or other agencies; and they give them 60 days to come forward and take over the claim. Because these claims are essentially class actions, they don't belong to the test claimant; they belong to all of the potential claimants.

And so under that procedure, the Commission gives anybody -- any other school district the opportunity to come forward and to take over the claim.

But in contrast, this notion of abandonment by implication, nobody gets notice of anything, nobody gets to come forward, nobody gets to take over the claim.

Santa Barbara has told the Commission in its letter that it did not abandon the claim, it never intended to abandon the claim, and it wanted to continue with that claim and to continue with Long Beach as the test claimant.

Staff has taken the position that the Commission has power to dismiss under the doctrine of laches. I haven't been -- I've appeared here over the years a few times, but I certainly don't go back far enough to know but I think -- I think this is the first time this Commission will ever have applied the doctrine

of laches, much less the doctrine of abandonment, to dismiss a claim. And this claim, remember, has been pending for 20 years.

Assuming, for a minute, that you're going to apply the doctrine of laches, it has two requirements: One, it must be an unreasonable delay; and; two, there must be prejudice. Some new liability must be created, witnesses have died, evidence is lost somehow. A material change in circumstance and prejudice to the opposing party.

Here, there isn't the slightest indication or suggestion by anybody that anybody has been prejudiced by any delay or by this 20-year lapse.

It's interesting that the letter the Commission sent out in March of 1995 said that if you want to, you can file new claims, new and supplemental claims. And those new claims will relate back -- if you do a comparative analysis, will relate back to a date, October 31, 1980. That's the date that Santa Barbara filed its claim.

But at the same time, this idea of abandonment would say that even though the new claimants get to relate back to 1980, Santa Barbara somehow loses its right to relate back to 1980 and all of the other school districts in the state do, too.

So others will speak to the assertion by the Department of Finance that there were prehearing meetings from 1993 to 1995. Obviously, I wasn't there. I don't believe anybody from Long Beach was there. Our records

certainly indicate that nobody from Long Beach was there. Dr. Berg, I believe, was there and can tell you what she recalls about all that.

But certainly, Santa Barbara was not there. And the idea of sitting around the table and saying, "Well, I wonder whatever happened to Santa Barbara. I wonder if it lost interest or if it has abandoned its claim," but nobody ever thinks to call or write Santa Barbara and say, "Did you abandon your claim?"

So Santa Barbara never intended to abandon its claim. And even if you're going to apply the doctrine of laches, there's absolutely no prejudice. So I urge you to decline to dismiss this claim.

CHAIR PORINI: All right, does anyone else for Santa Barbara want to speak?

Ms. McDonough?

MS. McDONOUGH: Speaking on behalf of the supplemental claimants in the special education test claim -- my microphone's falling out -- I hope Mr. Stone hasn't been tampering with the microphone.

Okay, there we go.

I want to say -- I want to echo Mr. Murray's statement that we are really not here to try and relive every nuance of past history, which many of us would really prefer not to do. But we are here for the principle that a test claim is a class action; and that 1183.08 of your regulations is a very important regulation because it protects the rights of all members of the class. And that means any school district, any

other local agencies, any agency that may have a right before this Commission can step forward and substitute themselves in a claim if the original test claimant does not wish to pursue that.

That's what's happened here, in our view, clearly. And we think that it's wrong at this point in the process, and to our knowledge, never having been done before, to say, no, that cannot happen.

I will call Dr. Berg at the appropriate moment, but I'm not sure if that's at this point or whether we should go on, simply to discuss what actually was known between '93 and '95. But I would like to add just one other point: That from our look at the records, there isn't a reason to -- we credit Long Beach's assertion that until after July 31, 1995, it reasonably believed that maximum age limit included 3 to 5 and 18 to 21. After that, it was too late for them to file a supplemental claim.

And until that point, they had understood that the Hayes court had remanded Riverside and Santa Barbara; and that when Riverside had age limit as part of its claiming items, that was included.

CHAIR PORINI: Okay. Mr. Mullender, do you wish to make a statement?

MR. MULLENDER: No.

CHAIR PORINI: All right. Mr. Stone, Ms. Suk?

MS. SUK: I'll just make a brief statement.

I think all of these arguments have been brought to you before. This issue has been pending before this

Commission for several years now.

And I would just like to make the point that this case just does not deal with an abandonment issue; it also has to do with the fact that after the Hayes decision on remand, this Commission went through a lengthy process -- a lengthy two-year process and put together a procedural Statement of Decision. And in that Statement of Decision, it was clear to everyone that in order to participate in the special education proceeding, there had to be -- claimants had to meet affirmative requirements. Riverside met that and other supplemental claimants met those requirements.

Santa Barbara did not. And, therefore, Santa Barbara cannot at this point try to revive its claim and to claim that their claim is still pending. Therefore, we urge that the Commission dismiss this claim.

If you have any other questions, I can actually also address the doctrine of laches questions, if you have specific questions about that.

CHAIR PORINI: All right, members?

Mr. Beltrami?

MEMBER BELTRAMI: Madam Chair, I'd like to clarify something with staff.

Paula, your recommendation -- one of your comments is that such delay prejudiced the Commission. Do you mean the Commission or do you mean the Department of Finance?

MS. HIGASHI: I'm going to defer to Pat.

MEMBER BELTRAMI: Okay.

MS. HART JORGENSEN: We didn't say that that occurred.

MEMBER BELTRAMI: No, I'm saying --

MS. HART JORGENSEN: What we're saying --

MEMBER BELTRAMI: It says that's one of the findings we should make.

MA. HART JORGENSEN: And --

MEMBER BELTRAMI: I thought that under laches --

MS. HART JORGENSEN: Well, the part --

MEMBER BELTRAMI: -- that delay was one issue, and the other issue is whether it prejudices the other party.

MS. HART JORGENSEN: But the Commission was the one that made the motion. In fact, I have here, and looked at Cal Jur, and it talks about withdrawal and it says, "The failure to prosecute statutes focus on the detriment to the judicial system as well as to the defendant attendant upon the tardy litigation of a claim."

So in this case it was the Commission that moved for the dismissal. While there was some discussion as to whether or not Finance had made that motion, it was the Commission itself that made it. So I think you could look at it twofold. I think you can see, is there a detriment or would the Department of Finance be prejudiced. We also need to look and see whether the Commission would be prejudiced, since if there were an action, since we brought the party, we would be the

defendant in a subsequent action.

MEMBER BELTRAMI: I get it. Thank you.

MR. STONE: May I speak to that, too, Madam
Chair?

CHAIR PORINI: Certainly.

MR. STONE: Mr. Murray suggested that no party
had suffered any prejudice. But in the historical
context of this special education claim, we would very
much dispute that. The Commission, when it got the case
back from Hayes in a whole new posture with now a finding
that there was, indeed, a federal mandate, it asked the
claimants to identify what parts of their broad special
education claim they wished to pursue, in light of this
court decision. And that's what the first years -- and
we'll recall this -- were about, was trying to identify
specific areas that they thought exceeded the federal
mandate. That's what the claimants were asked to do.

Riverside identified, I forget, 17, 18, 19.
Santa Barbara identified none. And it was represented to
us and by the Commission and by Riverside that they
weren't going to identify any; that they had ceased to
participate.

So the Commission then had, from this broad,
"Everything in state special education is a mandate," it
had seen the claim reduced to the specific areas that had
been identified. And because Santa Barbara was no longer
participating and because the claim had been shrunk, if
you will, this drastically, the Commission decided, at
great prejudice to the department, I would suggest, to

reopen the claim and permit other parties, if they wanted, to point to additional parts of the state special education program that they believed presented, even under the Hayes federal finding of a mandate, presented some basis upon which they could recover subvention. That never would have happened, I suggest, if the entire Riverside claim and the entire Santa Barbara claim had been noted by the parties, identified and supported by briefing, to survive.

So the Commission did all it could to distill the claim into surviving parts after Hayes, and the parties did all they could. And, again, Santa Barbara did nothing, decided not to pursue it, and they said so in their own recent letter: We spent a certain amount in legal fees and decided we would spend no more. That's their choice, but they have to live by the consequences of that.

And then half a dozen -- eight, maybe, supplemental claimants did come forward and expanded the claim with the right to go back to Santa Barbara's beginning claiming period of October 1980. That, obviously, prejudices the department because otherwise the claiming limitation would not have applied. They couldn't have gone back that far.

So our right to have the claims limited to the year preceding their being filed was waived by the Commission because of its interest in letting the entire class of school districts that were interested identify whatever they thought existed within the special

education framework as a basis for subvention after Hayes.

So I would suggest we were prejudiced because our liability was very much increased by these supplemental claims, and it was an extraordinary procedure that the Commission followed. And it did so in part because it recognized that Santa Barbara was no longer pursuing its claim.

CHAIR PORINI: Ms. Steinmeier?

MEMBER STEINMEIER: Mr. Stone, what documentation will we have to support your contention that Santa Barbara failed to respond? What was the -- you just said that the claimants were asked to identify what they wanted to pursue, and Santa Barbara failed to respond. Where would we find that in the documentation? Is there anything here to show us that that actually occurred?

MR. STONE: Well, I cited it in one of our recent briefs in a footnote. I cited the transcript in which both the Riverside representative, Mr. Craig Biddle (phonetic), and the Long Beach representative, Mr. Alan Tebbits (phonetic), testified before the Commission, I believe, in 1996, that Santa Barbara had dropped out.

We now have Santa Barbara's letter, indicating that after having expended a certain amount of attorneys' fees up to the superior court level in Hayes, they decided no longer to put any more money or effort into it. And we have my declaration, indicating that we were told that by Commission staff and by Riverside

representatives back in '93 and '94 and '95.

Riverside was literally wringing its hands saying, "Well, we're alone now. It doesn't seem fair to us that we have to carry the whole burden. We wish Santa Barbara were here," but they weren't. They had chosen not to respond to the Commission's requirements.

MEMBER STEINMEIER: Yes, but in that same letter you just talked about, they also indicated that they were handing their case onto Long Beach, though; the recent communication with them.

MR. STONE: Well, yes --

MEMBER STEINMEIER: But it's late. You're saying it's after the fact?

MR. STONE: It's very late, yes.

MEMBER STEINMEIER: All right.

MR. STONE: Because they also indicated they were content to let Riverside carry the ball. And Riverside did carry the ball. I mean, it's not as if they were surviving special education claims.

MEMBER STEINMEIER: Plenty of them to go around.

CHAIR PORINI: Ms. Higashi?

MS. HIGASHI: I have two late filings that I'd like to circulate to you since these witnesses are not here at the table. One is a declaration from Santa Barbara, and it's under penalty of perjury. And this would then just be appended to the letter that was previously filed by Santa Barbara.

The second declaration that I have is from

Dr. Carol Berg from the Education Mandated Cost Network,
and this was also received yesterday.

MR. STONE: We, by the way, were not in receipt
of either of these, I think. Certainly not the --

CHAIR PORINI: Do you want a copy?

MR. MURRAY: To my understanding, Madam
Chairman, is that Mr. Scribner called I believe about two
days ago, and asked that the Santa Barbara letter be
stated under penalty of perjury, and that's the reason
for the Santa Barbara declaration.

MR. SCRIBNER: Yes, that's correct. I don't
know -- I think it, again, was more than two days. But
we noticed that it wasn't supported with a declaration,
and we felt it best that it would be.

CHAIR PORINI: All right, let's take just a
moment so members have an ability to take a look at these
declarations.

MEMBER STEINMEIER: Thank you.

(A few moments were taken for the Commission
Members to review the new handouts.)

MS. McDONOUGH: Ms. Porini, I would like to be
recognized, when you're ready to commence.

CHAIR PORINI: All right, it looks like most of
the members have looked at the document.

Ms. McDonough?

MS. McDONOUGH: I wanted to just respond
briefly to something Mr. Stone said regarding the
Commission basically after the remand spending some time
reviewing the issues from '93 to '95, and then saying,

"All right, school districts, come forward, if you wish to identify issues."

He, in part, characterized that as being because Santa Barbara had dropped out or decided not to pursue this matter. Our understanding of that, as set forward in Dr. Berg's declaration, was that the real issue was that because of legal expenses and other reasons, Riverside, for a period of time, said it was unwilling to do the briefing prior to '93; that it would only pursue this matter from '93, forward, rather than really looking at whether state law exceeded federal law back to 1980. And because of that, the Commission, that's our belief, decided to open this matter to supplemental claimants, to make sure that all matters were handled.

The second point I want to mention is that the 16, 17 or 18 issues, thereabouts, that Riverside did file on, included the age limit category. And I just want to repeat that based on my looking at the record and what Long Beach has declared and stated in their documents, they reasonably believed that that covered this issue at the time.

Dr. Berg is also here with me to answer any questions that anyone on the Commission has regarding her declaration. She was present in the '93 to '95 period, which neither Mr. Mullender or Mr. Murray or I were not there.

MR. STONE: If I may interject one point; the issue about what motivated the Commission to open the

matter to supplemental claimants is easily resolved by looking at the Commission's own order. And Ms. McDonough is right in the sense that one of the grounds is that Riverside had willingly limited its recovery period. So claimants were willing to repeat Riverside's identified subject matters but seek to establish them for the entire claiming period.

But the other part is that the supplemental claimants were free to name any other special education subject as a new area, and that coincides exactly with what I mentioned earlier.

CHAIR PORINI: All right, Pat, did you have a comment?

MS. HART JORGENSEN: Well, I just wanted to point out, I can see where the confusion took place at the hearing regarding Santa Barbara.

I have the transcript here that Mr. Stone referred to, but he did not include. It's from the hearing of Thursday, September 26th, 1996:

"Mr. Richardson: Did Santa Barbara not provide any new comparative analysis on any of these issues because they made the assumption that their original information was still going to be used as a basis for the claim?

"Mr. Biddle: Santa Barbara dropped out of the proceeding.

"Mr. Richardson: Right, okay.

"Mr. Tebbits: Santa Barbara hasn't been here for several -- yeah, I think they just -- what's the

right word here -- lost interest.

"Mr. Richardson: Okay, that's fair.

"Mr. Tebbits: From the many years I -- and I can't speak for Santa Barbara --

"Member Richardson: Are you representing who, Mr. Tebbits? I'm sorry.

"Mr. Tebbits: Long Beach Unified School District."

So in the transcript, it does -- it's Mr. Biddle who indicated that -- he used the word Santa Barbara had dropped out of the proceeding, but I don't believe that he was representing Santa Barbara.

VICE CHAIR SHERWOOD: I'd like to comment on that.

CHAIR PORINI: Mr. Sherwood?

VICE CHAIR SHERWOOD: I'll just establish here through this process, it was my belief that Santa Barbara had basically dropped out of the process. But also -- and I believe what Mr. Stone has indicated is correct in the belief at that time. And I think we did attempt to go the extra mile by opening up the claim to go back to 1980. And I think we tried to be most cooperative with everyone involved at that time.

Therefore, my sympathies have not been with Long Beach. And, quite frankly, they haven't been with Santa Barbara, either. But strictly looking at this, and looking at what I see in writing and through the transcripts and in the legal documents and where we're at today, I don't see where Santa Barbara, itself, was

thoroughly and properly notified of what the situation was at the time. I don't see that in writing.

I've heard conversations back and forth, but I don't see it here in writing.

Al?

CHAIR PORINI: Mr. Beltrami?

MEMBER BELTRAMI: Mr. Sherwood, what if this was 50 years after? And --

MEMBER STEINMEIER: They'd still be here.

CHAIR PORINI: We'd all be long gone.

MEMBER BELTRAMI: And Santa Barbara -- you would think that someone in Santa Barbara would say, "I wonder what's happening to this?"

Or maybe I'd call Dr. Berg and ask her what's happened, or I'd call my cohorts in Long Beach.

But just to say, "We thought this was being handled," and that's it. I'm a little concerned about that.

CHAIR PORINI: Let's take Santa Barbara first and then Ms. Berg.

MR. MURRAY: Thank you. Everybody talks, from the Department of Finance, about how other people said, "Well, I guess Santa Barbara dropped out. I guess Santa Barbara lost interest in the claim." None of those people represented Santa Barbara. And as Mr. Sherwood has said, Santa Barbara was never contacted to see if it agreed with all of this kibitzing by other people to the effect that Santa Barbara lost interest, abandoned, dropped out.

VICE CHAIR SHERWOOD: May I just interrupt there one second? I've indicated, I haven't seen anything in writing that would indicate that.

MR. MURRAY: Nor have I.

And Santa Barbara's letter, which was sent to the Commission on March 28th, it says, "Santa Barbara was never advised that it was necessary for Santa Barbara or any other district to do anything further to obtain a decision on the Santa Barbara claim. The Santa Barbara claim is the one that was remanded by the Hayes case for decision."

These other claims that the department says, "Well, we were prejudiced because you open it up to other claims." Santa Barbara didn't say, "Open it up to other claims." Santa Barbara just said, "Do what the Hayes case ordered. Decide our claim."

There's no -- there's not the slightest hint of any prejudice, any lost evidence, any new liability by the Department of Finance, any lost witnesses or anything. There's never been a single scintilla of a notion that the Department of Finance has been prejudiced.

So Mr. Sherwood is absolutely correct. And if the Commission is influenced at all by its own regulation which says you must notify other districts and give them an opportunity to take over before somebody can withdraw a claim, if you're influenced at all about that, regarding this so-called abandonment, you should refuse to dismiss this case.

MEMBER BELTRAMI: Mr. Murray --

CHAIR PORINI: Yes, Mr. Beltrami.

MEMBER BELTRAMI: You indicate that Santa Barbara said, "Resolve this case now, it's been remanded back by the court." When did Santa Barbara come before us to say that?

MS. BERG: Santa Barbara never came before --

CHAIR PORINI: Ms. Berg?

MS. BERG: I'm sorry.

MEMBER BELTRAMI: I was just told that Santa Barbara -- didn't you just say that, Mr. Murray?

MR. MURRAY: Yes, sir. For ten years -- for ten years before the Hayes remand, Santa Barbara appeared twice in the Board of Control and twice in the superior courts --

MS. BERG: That's right.

MR. MURRAY: -- and spent, as it indicates, 23,000-plus dollars on doing all that. And we hear the Department of Finance saying, "Well, you can't run out of money. It's just too bad if you run out of money. You have to get off the train then, if you run out of money."

Why wouldn't the Commission say, "Look, Santa Barbara hasn't done anything here. Does anybody want to take over their claim?" This belongs not only to Santa Barbara; it belongs to the whole thousand or more school districts in this state.

So my answer, sir, is that Santa Barbara did litigate this thing actively, and for a period of ten

years. And then it got the Hayes case, where the Hayes -- where the Court of Appeals says to the Commission, "Decide this case."

And I believe that Santa Barbara would be reasonable in assuming that the Commission then would decide this case.

MEMBER BELTRAMI: In their absence?

MR. MURRAY: In absence -- there's no indication anywhere, there's no rule, no principle of law that says Santa Barbara even has to do anything more, other than file its claim and litigate it for ten years. What is Santa Barbara supposed to do? Appear --

MEMBER BELTRAMI: Well, they could come to a meeting. That would be wonderful. Make sure they exist.

CHAIR PORINI: Ms. Berg?

MS. BERG: If I may, Madam Chairman? There are only three of us in this room who go back at least to '93, and that's Mr. Sherwood, Mr. Stone and myself.

Santa Barbara has, in fact, changed entirely every person in their administrative unit. As a matter of fact, when I became involved full-time in 1994, the last vestige, in terms of administrative personnel at Santa Barbara, did, in fact, call us. She was the CFO for Santa Barbara, indicating to us that she was of the hope that just because nobody left in Santa Barbara had the knowledge of this case, that, in fact, they still were an active part in the class action.

I, naively perhaps, assured them that that was, in fact, the case. To my face, to my ear, no one

in Santa Barbara ever indicated any interest in withdrawing. They felt a vested interest for having been there the first 13 years.

CHAIR PORINI: Any other questions?

Mr. Foulkes?

MEMBER FOULKES: Thank you. Follow-up questions to Ms. Berg.

And this is a 20-year-old case and, obviously, as you've stated, you've been more familiar with it than most folks here. Do you feel that during this 20-year period, at least as far as you're aware, there has been any unnecessary delay caused by the Commission or Commission staff on this case?

MS. BERG: Not particularly to Santa Barbara.

As you will recall, the Hayes case remanded back here in, I believe, '93, and we didn't start hearings before this Commission until I believe early -- late '95 or early '96.

MEMBER FOULKES: Right. But as of this case, you don't feel that there has been any unnecessary delay by either the Commission or Commission staff?

MS. BERG: No, I thought things were proceeding as normal.

MEMBER FOULKES: Now, again --

CHAIR PORINI: Could you define that?

MS. BERG: Well, you have to admit, once we started a hearing, this thing has moved along.

MEMBER FOULKES: Now, on the -- obviously, the efficiency of the Commission being very important to you,

do you believe that this case has been pushed as effectively and expediently by Santa Barbara, as you would expect from the local governments?

MS. BERG: From a member of the class action portion of it, yes, I do.

MEMBER FOULKES: Okay. And do you believe that if we do follow staff's recommendation, that it will, because of the additional workload on the Commission, perhaps delay other cases that are pending before the Commission?

MS. BERG: I have no knowledge of that, Mr. Foulkes. I can't respond properly.

MEMBER FOULKES: Okay. Well, again, I think it's important because these cases are -- each one is important and each one has its own issues that need to be looked at. However, as you know, there have been a lot of representations lately that the Commission itself is not following these things judiciously, is not taking its -- doing its proper work to take care of these cases. And I think this is a perfect example of something where the delay has been on the part of the claimants, significantly and throughout the record.

Now, the question of whether laches, I think I agree with Mr. Sherwood that it may not arise to that; but I do think that we have to recognize that it's cases like this, with significant delay on the part of the claimants, that not only cause this case to be delayed, but also are going to cause workload in other cases to be delayed. And I think it's important that we recognize

that because as in discussions that we're going to have later on today, that it is all related in it, and it's certainly not -- at least especially in this case -- I don't think any fault of the Commission or Commission staff, that we're at the point we're in now and having to look at a case that's, you know, 20 years old and kind of continues life anew.

CHAIR PORINI: Yes?

MR. MURRAY: I'll be very brief.

With all due respect, Mr. Foulkes, I believe that what the Commission should have done, is follow the Hayes mandate and decided the case. That was in 1992. I think the Commission should have promptly proceeded to do what the Hayes case said, and that is hear and decide this case.

If they were not going to do that, I think they should have provided an opportunity for other school districts -- an invitation to take over the case before dismissing it. That's the minimum that due process requires: An opportunity to take over the case as the Commission's regulations require in the case of a withdrawal.

VICE CHAIR SHERWOOD: Madam Chair, may I make a motion?

CHAIR PORINI: I just want to get one comment in, and then I will certainly entertain a motion.

I would just like to say that I'm not an attorney. I know we have a room full of attorneys here; but I think the courts actually have a term for a claim

like this, and I think they call it "stale."

In my mind, it just barely passes the "giggle" test. And the only reason that it does, frankly, is because of our own regulations. And I want to be clear to the room, as we have at a previous hearing, and to make it very public that the Commission intends to take a very serious look through its own regulation package at making a change that will not allow a claim that clearly appears to be stale, to sit for 20 years.

I think this Commission, as Ms. Berg has said, is trying to expedite its work, is trying to work on things in a timely manner. And we want to make sure that we have all the tools to do that.

Mr. Sherwood?

VICE CHAIR SHERWOOD: Thank you.

MEMBER STEINMEIER: Can I say something before he makes his motion, which might actually help him?

One thing.

CHAIR PORINI: Please, Ms. Steinmeier?

MEMBER STEINMEIER: I agree with Mr. Sherwood that really maybe this is on a technicality; but based on our rules, we have not done what we needed to do to make sure we got rid of stale cases. This is the Commission's responsibility. So maybe it's a technicality, but we do have to accept our part in this.

And I believe, even though maybe it is rather tardy, that the claimants really have tried to follow our rules. Therefore, I think I'm going to support what Mr. Sherwood's going to say in a minute.

VICE CHAIR SHERWOOD: Now, you may be getting ahead of yourself.

MEMBER STEINMEIER: I know, could be. Go ahead, Mr. Sherwood. You're on.

CHAIR PORINI: All right, you're recognized, Mr. Sherwood.

VICE CHAIR SHERWOOD: Well, I'd like to move for a dismissal of the Santa Barbara claim, other than that portion related to special education, ages 3 to 5 and 18 to 21.

MEMBER STEINMEIER: Second.

CHAIR PORINI: All right, we have a motion and a second.

Ms. Higashi?

MS. HIGASHI: For clarification, we're referring to Education Code 56026?

VICE CHAIR SHERWOOD: You have it memorized very well, yes.

MS. HIGASHI: Yes, unfortunately.

VICE CHAIR SHERWOOD: Yes, that's the code. That is it.

CHAIR PORINI: We have a motion and a second.

Any further discussion?

All right, hearing none, may we have roll call?

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Yes.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Aye.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Abstain.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: Aye.

MS. HIGASHI: The motion carries.

MS. BERG: Thank you very much.

MEMBER FOULKES: And Ms. Porini, before we go
to the next item --

CHAIR PORINI: Yes, Mr. Foulkes?

MEMBER FOULKES: Because, again, I was just
noticing as we skipped past Item 5, that it was on the
consent calendar, and I wanted to clarify that -- without
bringing the item up again -- is that we are opposed to
that item, and I want to be recorded as such.

MS. HIGASHI: I will record you as a "no" vote.

CHAIR PORINI: All right, thank you.

MS. HIGASHI: This brings us to Item 7. Since
the Commission just on Item 6 dismissed the withdrawn
portions of the Santa Barbara test claim, staff
recommends that the Commission should deny the appeal
filed by the Department of Finance of my action to
consolidate the portion of the test claim that remains
with the special education test claim previously filed by
the Long Beach Unified School District.

This action would allow the consolidation to stand and permit the administrative law judge from the Office of Administrative Hearings to close the administrative record and prepare a proposed statement of decision for consideration by the Commission. The primary change would be the reimbursement period for the Long Beach test claim would then begin in 1980 instead of 1985, if the Commission were to approve that test claim.

So from the perspective of staff, we recommend -- I recommend, certainly -- that the Commission deny the appeal. This will minimize staff work on this claim.

CHAIR PORINI: All right. Does anyone at the table wish to make further comment? Mr. Stone?

MR. STONE: Well, this may be more related to the previous item, and I understand it's water under the bridge, but there are semantical issues with regard to the Hayes case that I did want to address.

Mr. Murray says that the Court of Appeal in Hayes directed the Commission to resolve the Santa Barbara. "Resolve" doesn't mean grant. "Resolve" means consider on remand. And the Commission has done so. The Commission asked the parties what remained of it, and the parties told you. And you are in the process of resolving the Santa Barbara claim. You've already determined that it wasn't part of that matter that goes back to 1980, and you've refused to reconsider that. That's resolution. It doesn't mean that every item of the claim, as it existed in 1980, has to be considered on

its merits, regardless of whether the parties have supported it.

Secondly, the evidence that you have with respect to Santa Barbara's understandings and motives, there's a fairly wide spectrum of it. And I would just point out that those who have given testimony, including Dr. Berg today, have said, among their statements, that Santa Barbara thought that a test claim -- that in a test claim like special education, it's sufficient for one test claimant to proceed; and that Santa Barbara no longer had an obligation or duty to put forward any money or to send representatives. That, too, is consistent with the Commission's understanding and what the Commission has done.

Riverside is the surviving test claimant. It did carry the ball. It identified the areas that the Commission was required to consider on the merits, and the Commission has done so. So it's not at all inconsistent with what the Commission has done.

CHAIR PORINI: All right, Mr. Murray?

MR. MURRAY: This just sounds like a re-argument of the last issue. I don't have anything further to add. We agree with the staff's recommendation that the appeal should be denied.

CHAIR PORINI: All right, members, any questions, comments, motions?

MEMBER STEINMEIER: I move to deny the appeal.

VICE CHAIR SHERWOOD: Second.

CHAIR PORINI: Discussion?

All right, we have a motion and a second.

Please call roll.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Yes.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Yes.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Aye.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: Aye.

All right.

MS. HIGASHI: Item 8 has already been adopted.

CHAIR PORINI: For our reporter, do you need to
take a break?

THE COURT REPORTER: No, I'm fine. Thank you.

MS. HIGASHI: Item 9 is postponed.

This brings us to Item 10, which is my report.

So if you flip way to the back of your binder,
you'll find Item 10. Item 10 includes our workload
report. And most significant for us is that we have one
new test claim. And we've received 40 incorrect
reduction claims but 39 of them are on one particular
mandate, the "Certification of Teacher Evaluator's

Demonstrated Competence." And that's just something we wanted to note for the record.

Next month, the Commission will be hearing the Proposed Parameters and Guidelines on the "Special Education" test claim. And we would like to set it as the first order of business right at 9:30. And the parties to that claim are available at that time. So I just wanted to confirm that with all of you.

CHAIR PORINI: And all of the parties know that it will be a special order?

MS. HIGASHI: It will be the first order of business, yes.

CHAIR PORINI: Okay.

MS. HIGASHI: The Assembly Budget Subcommittee number four approved the Commission's budget this week, so we have been approved by both houses. So we are looking forward to increases in our staffing.

MEMBER FOULKES: And no issues in conference?

MS. HIGASHI: No issues in conference.

The Local Claims Bill is still sitting -- we're waiting to finish up our statewide cost estimates and to receive the deficiency report from the State Controller's office. After all of those are in, then the final amendments will be made, and then the bill will be moved.

On the legislative front, there are two bills, as you know, that would impact the operations of the Commission. Yesterday Assembly Bill 2624 was set for hearing, and I understand it was approved.

And Mr. Foulkes may have more to add. I

believe he was there. We were having meetings at the office.

MEMBER FOULKES: Yes, as a matter of fact.

MEMBER STEINMEIER: You're defending yourself, Mr. Foulkes.

MEMBER FOULKES: And one thing, the reason I wanted to bring these issues up and talk to the Commission about this is, I've talked to Paula about what this Commission has done on legislation in the past; but especially this year, and I've seen it over the past two years from the legislative side, which is my other hat, is that of the 52 or whatever boards that we sit on, this is the one that takes the least active role in legislation and has significant legislation that affects it. And if we look at, you know, some of the scope and duties of the Executive Director part of it, the big part of it is legislation.

And what we found is that there's a large, empty chair, I think, that our office is there talking about the Controller issues. But, frankly, I don't feel that I am the appropriate person to be talking on behalf of the Commission, but I'm put in that position because I'm the only person there and I am sitting here for the Controller and the Commission. And I think it would be helpful for us to do analyses of these bills that affect us, to discuss them here; you know, come up with positions, should we choose to do that; but also to have Paula there, you know, to talk about factual things. Because what we found is that there are great

discrepancies of fact about what the Commission does.

And rather than -- and again, I don't feel it's proper for our office to be either pointing those out or making representations with people who are believing -- legislators are believing are coming from the Commission. And we keep trying to explain, though, this is this office that does this piece, and then there's the Commission. But they're not keying into that, so I would --

MEMBER LAZAR: What has been the precedent of the Commission in the past on something like this?

CHAIR PORINI: Paula?

MS. HIGASHI: It's my understanding that previously the Commission has not taken formal positions on legislation, mainly because of the composition of its membership, that each office holder or each department may be taking their own positions or recommending positions to the Governor. That's why they haven't taken positions. But since I've been here, I don't think we've even been asked to come over to testify on bills.

Occasionally, committee consultants might call and ask technical questions about the Commission's operations. On the bills pending this year, we've received no such inquiries.

MEMBER LAZAR: Would it compromise you if members of this Commission appeared and testified or stated opinions?

MS. HIGASHI: I think that's, you know, an issue for the Commission to consider.

CHAIR PORINI: You know, I will tell you that, frankly, the Department of Finance, in all of the boards and commissions that it sits on, abstains from taking any position on bills, because we do have kind of the next-to-final say, in that we do an enrolled bill report to the Governor.

So I think it would be very compromising for us to take a position here and then do an enrolled bill report. So I, frankly, would prefer that we remain in this position, where we're not actively pursuing legislation, taking a role before the Legislature.

MEMBER BELTRAMI: But that doesn't preclude individual members, Madam Chair, does it?

CHAIR PORINI: No, it certainly doesn't. But I don't think that you can represent the Commission, without a vote of the Commission. And I'm just saying, as one member, I would not be able to vote on any legislation.

MEMBER STEINMEIER: You'd have to abstain from that, so that it would not be --

MEMBER BELTRAMI: Mr. Foulkes is answering questions about the Commission when you're there, and you have to be there and --

MEMBER FOULKES: Well, and part of it, I guess, it's two-tier. And I understand the chair's concerns on positions. But, for example, we -- I think it's to be our due diligence to at least analyze bills to know the effects. Because, frankly, you know, I don't know the effects that these bills have on the Commission, as a

Commission. I mean, I know how it affects our office.

But without an analysis -- internal analysis, you know, I think that it's important for us to know what may lie ahead of us because, again, some of these are directly affecting Commission members. And so I think that would be helpful to have that done at least and discussion of what those effects are, regardless of whether we take a position.

And the other question would be, I guess since it, at least from my understanding of the normal duties that the executive director would be somebody that would be appropriate to at least testify on how the Commission operates and what it does and doesn't do. For example, questions have come up in committees on backlog, on what part of the delay is the Commission's fault, et cetera. And I think it would be helpful for us to have somebody there, even in a neutral capacity, just to represent us, and say, "Well, this is -- these are the facts. This is what we do. This is how we operate," et cetera. Because again, I -- questions have been asked to me about that, and I don't have the expertise or knowledge to really answer those. And, again, I think -- and I didn't want to, you know, make any requests of Paula without talking to the Commission first because I think it would have to be a policy decision of this body.

MEMBER GOMES: I agree with you that, obviously, if there's facts that are being misrepresented or not understood properly, then, you know, that's how legislation gets decided and is passed through.

However, on the other hand, working for the Governor's Office of Planning and Research, we do enrolled bill reports, as well. And a lot of times, I'm asked to do them personally. So it's a conflict, I would say, to be representing the Commission in that respect. However, I agree with what you're saying about somebody who can represent them on factual issues, not necessarily a stance that the Commission would be taking on proposed legislation. Just my thoughts.

CHAIR PORINI: Ms. Steinmeier?

MEMBER STEINMEIER: I appreciate that. And I understand this is probably the reason why we have never, as a Commission, taken a position on bills. At the same time, allowing the process to go ahead without any either technical assistance from -- except upon request -- or not having an analysis, so other individual commissioners who might want to go testify, not on behalf of the Commission but just representing themselves, we don't know it, if we don't see the analysis. They just tell us there's a bill number and we have to go do it ourselves. It's not going to happen.

So to follow up with what Mr. Foulkes said, I would like to see analyses on bills that are going to affect the Commission. I also would like, I think -- let's see if we can get a majority of us to agree -- that Paula or Pat, someone should represent the Commission when those bills are being heard; so if there are technical questions, that they can answer how this would affect the Commission, how does the Commission operate,

is this something that -- not without taking a position.
I don't want them to take a position for us because we're
not going to do it.

Does that sound reasonable?

CHAIR PORINI: Why don't we ask the staff to
come back with a listing of the bills that impact the
Commission and a proposal as to what you can prepare?

MS. HIGASHI: Okay.

MEMBER BELTRAMI: These two bills?

MEMBER STEINMEIER: These two that we know.

MS. HIGASHI: So far it's these two bills.

MEMBER STEINMEIER: There have been others in
the past, though.

CHAIR PORINI: Yes.

MEMBER BELTRAMI: Yes, but not many.

MS. HIGASHI: No, in the past, we have limited
our participation to the various -- the meetings that
have been convened by the various sponsors of
legislation, enacted in a technical capacity, in
responding to what -- how we read a particular sentence.
And if it did what they thought they wanted to do, we
have not taken any positions in any of those meetings,
but we have just been there as technical experts.

And like I say, in the past, there have been
local government committee consultants who have called
and asked technical questions. And we have -- I've
certainly responded to their technical questions.
I've faxed copies of court decisions, sent copies of
Commission determinations and responded.

But surrounding these two bills, we've not received any inquiries.

And I haven't been proactive about calling to say I'm available here to answer questions.

CHAIR PORINI: What's the desire of the members?

MEMBER BELTRAMI: Well, a specific item, for instance, Madam Chair, is a proposal that we have added a member who would be an alternate for either Mr. Lazar or the school representative, Ms. Steinmeier, and who would sit through all the meetings, personally, just from -- since I don't get -- the public member doesn't get that -- I don't know that that's particularly good government to have alternates sitting and being paid to sit. I mean, that kind of thing.

But, you know, those are -- I suppose, can be touchy. Joann may not agree or John may not agree.

MEMBER STEINMEIER: I agree with you. I don't want them, either.

MEMBER BELTRAMI: But I don't know how you can comment on that, and that's really not.

MEMBER STEINMEIER: That's the problem.

MS. HIGASHI: That's the problem, because the other --

MEMBER BELTRAMI: And the cost factor.

MS. HIGASHI: Right. And the other question that has come up is, you know, what does staff think of the proposals to change the duties of the staff -- the chief counsel to the Commission. And that's not a

question that's appropriate for staff to really respond to.

VICE CHAIR SHERWOOD: I'm not sure we're being asked to respond to these questions, either.

MS. HIGASHI: We have been, by the claimants.

VICE CHAIR SHERWOOD: By the claimants?

MS. HIGASHI: Yes.

VICE CHAIR SHERWOOD: I'm not sure that if the Legislature also understands that, they probably would look at that issue.

MS. HIGASHI: And since Assembly Member Cox was a member of the Commission, it may be, too, that other members have deferred to him because he's had personal experience here. I'm sure that's also a consideration.

CHAIR PORINI: Well, I think, is it the desire of members to see analyses of the bills?

Then why don't we ask you to prepare that and bring it back to the members?

MS. HIGASHI: Okay.

CHAIR PORINI: All right.

MS. HIGASHI: All right. We can do that.

CHAIR PORINI: The next item?

MS. HIGASHI: The next item is rulemaking, just an update. We did have a workshop last month, and we received a lot of input. And Commission staff is reviewing it. And once the public comment period closes, we will probably be bringing back modifications to those original proposals.

The Commission's Web site has a new look now.

And if you have had an occasion to go on the Web, you may want to stop and take a look at it.

MEMBER BELTRAMI: Is that a standardized --

MS. HIGASHI: It's one of the --

MEMBER BELTRAMI: -- that they have for all state --

MS. HIGASHI: Yes, it's one of the approved looks.

MEMBER BELTRAMI: I see.

MS. HIGASHI: To bring some consistency.

MEMBER STEINMEIER: No creativity allowed, huh?

MEMBER FOULKES: And if I may, Madam Chair, on the Web site issue --

CHAIR PORINI: Yes.

MEMBER FOULKES: -- I had talked to the Executive Director -- again, this is a very minor thing but I thought I'd bring it up -- that there are no bios or pictures of the Members of the Commission. And one suggestion was either doing that -- because most of the commissions that we sit on have that -- or hyperlink them to the homepages of the folks who -- I mean, at least, for the -- instead of having to put a separate bio on there, but for the members who don't have that, to have some information about them or connecting them to the Treasurer's page or the Governor's page, or the Director of Finance. I mean, it's just a thought.

CHAIR PORINI: So, staff, you'll --

MS. HIGASHI: We are open to that, yes. And that's an easy fix to make. And then for those --

MEMBER BELTRAMI: Pictures?

MS. HIGASHI: And we just received --

MEMBER STEINMEIER: Approved by the members.

MS. HIGASHI: We just received Mr. Lazar's bio so we can prepare his as well. Or the city, doesn't it --

MEMBER STEINMEIER: You may need to have updates of our bios, Paula.

MEMBER LAZAR: Unfortunately, we don't do that at the city.

MEMBER STEINMEIER: Some our bios are so old, Paula, you may need to update them.

MS. HIGASHI: Yes, we will.

CHAIR PORINI: Well, why don't we help staff out here? We'll have Paula fax whatever she has to members.

MS. HIGASHI: Because I know there is a bio for the Director of Finance on the Web page. I know there's certainly one on the State Treasurer's Web page. We've certainly seen the Controller's Web page. And it's really the other appointee members we don't have.

CHAIR PORINI: All right.

MS. HIGASHI: It is true the Commission is moving. There are boxes everywhere. And don't ask us to go back and find anything because it's probably being boxed up, if it hasn't already been so. The movers will actually start packing up our office at 4:00 o'clock tomorrow. Our computers should go down around midday, so we can start packaging all of our materials for

disconnection.

CHAIR PORINI: All right, and you've sent out a notice to --

MS. HIGASHI: We've sent out notices to our interested-persons mailing list. I put my new business card on the agenda table. All of our staff has their new business cards.

MEMBER STEINMEIER: Are we getting new cards?

MS. HIGASHI: And over the weekend, the telephones will be installed. We are all keeping our fingers crossed it will all be perfect.

MEMBER STEINMEIER: She has one.

CHAIR PORINI: All right.

MS. HIGASHI: If the phone rings a long time on Monday, it may be due to the move and the fact we're unpacking boxes and still trying to remember where everything is.

CHAIR PORINI: All right, so we'll all be patient. And if it doesn't answer on Tuesday, we'll send the carrier pigeon.

MS. HIGASHI: Or else you can try e-mail. And our e-mail address will be "first name," dot, "last name" @csm.calgov.

MEMBER BELTRAMI: Say that again, first name --

MS. HIGASHI: So that should work.

And next month's agenda will include, as I've already said, "Special Education." We will also hear review of claiming instructions, the item that was postponed this month. We should have a statewide cost

estimate on the "Criminal Background Checks" mandate.

And we also have proposed amendments to parameters and guidelines for "School Bus Safety, I and II," and "Not Guilty by Reason of Insanity."

We also have a hearing on the "Gann Limit Calculation" test claim, and we also have an incorrect reduction claim on "School Crime Statistics and Validation Reporting." And that will be a consolidated hearing for all of the claimants who have filed on that particular mandate.

We'll have proposed statements of decisions to bring back to you for your actions taken today. And that should be a full enough morning, I suspect.

We've also given you, in the ED report, what we expect the June and July hearings to look like.

Camille Shelton, our staff counsel, will be returning next week; and so we believe that by the time she starts up, we will be looking at items for the June hearing, that would be items that she will return to.

So our suggestion is that you plan on a full morning in June and in July, and maybe a little bit after. And we won't know until after the drafts are issued and we receive comments back as to how controversial the items will be.

Are there any questions?

CHAIR PORINI: Questions or comments?

MEMBER STEINMEIER: Good luck on the move.

MS. HIGASHI: Thank you.

MEMBER STEINMEIER: Don't lose anything.

MS. HIGASHI: This brings us finally to Item 11. And I'd like for Shirley Opie to present this item. She's our assistant executive director. And she's largely been responsible for all of the incorrect reduction claim workload.

MS. OPIE: Good morning.

CHAIR PORINI: Good morning.

MS. OPIE: Local agencies and school districts have filed 368 incorrect reduction claims disputing the State Controller's adjustments to their reimbursement claims filed under the Open Meetings Act mandate.

The San Diego Unified School District filed the first incorrect reduction claim with the Commission. In September 1999, the Commission heard the San Diego incorrect reduction claim and concluded that the minutes-per-page standard the Controller used in reviewing the reimbursement claims was arbitrarily developed, and that the Controller's application of this standard resulted in an incorrect reduction of the San Diego reimbursement claim.

Based on the Commission's decision on San Diego's incorrect reduction claim, the Controller began notifying claimants who had filed Open Meetings Act incorrect reduction claims that they will issue warrants for reductions made based on the per-page standard upon receipt of an appropriation. Accordingly, there is no longer a disputed matter for determination by the Commission on many of these incorrect reduction claims.

Therefore, staff recommends that the Commission

adopt the proposed resolution which directs the Executive Director to close the file on each incorrect reduction claim under the Open Meetings Act mandate for each claimant who does not dispute the amount the Controller has agreed to pay and to send them a copy of this resolution, and set any remaining disputed incorrect -- well, any disputed incorrect reduction claims filed on this mandate for Commission hearing and decision and determination.

Yesterday staff met with several representatives of cities, counties and school districts, and there was general agreement regarding the resolution.

CHAIR PORINI: All right, any questions or comments from members?

MEMBER BELTRAMI: Just be certain that Santa Barbara gets a notice.

MEMBER STEINMEIER: In case they get an Open Meetings Act notice --

MS. HIGASHI: I won't leave anybody out.

CHAIR PORINI: I don't think we will.

All right, may I have a motion?

MEMBER BELTRAMI: So moved, Madam Chair.

VICE CHAIR SHERWOOD: Second.

CHAIR PORINI: We have a motion and a second.

May I have roll call?

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Aye.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Aye.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Aye.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: Ms. Porini?

MEMBER PORINI: Aye.

MS. HIGASHI: Thank you.

CHAIR PORINI: All right. Are there any
further items of business?

MEMBER BELTRAMI: Madam Chairman, just for
information.

CHAIR PORINI: Yes.

MEMBER BELTRAMI: I did meet yesterday, as your
hearing officer, with the Controller's office and
San Bernardino County, and we're still working on it.

CHAIR PORINI: Great. Thank you for the
report.

At this point in time we are going to recess
our regular meeting, and we will now -- the Commission
will now meet in closed executive session pursuant to
Government Code 11126, subdivision (e), to confer with
and receive advice from legal counsel for consideration
and action, as necessary and appropriate, upon the
pending litigation listed on the published notice of the
agenda and Government Code section 11126, subdivision

(a), and 17527, to confer on personnel matters listed on the published notice and agenda.

Will everyone please clear the room?

(Closed Executive Session was held from

11:42 a.m. to 12:15 p.m.)

CHAIR PORINI: Okay. This is the report from closed executive session. The Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and Government Code section 11126, subdivision (a), and 17527, to confer on personnel matters listed on the published notice and agenda.

We are adjourned. Thank you.

(The hearing concluded at 12:16 p.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 30th day of April 2000.

DANIEL P. FELDHAUS

CSR #6949, RDR, CRR